

Diploma in Law (Malta): Intake October 2023

Assessment Task: Written assignment based on chosen questions	
Module: <i>Award in Principles of Competition Law</i>	Tuition Centre: 21 Academy Licence Number: 2018-017
Level: Award MQF Level 5	Student Name:
Date:	ID Number: <same no. submitted in student profile>
Assignment Deadline: 25 April 2024	
<p>Task The purpose of this unit is to develop an understanding of a particular topic you will write about which forms part of Competition Law.</p> <p>Note This assessment provides students with an opportunity to put into practice the relevant provisions of the law in relation to the topic they choose to write about forming part of Competition Law.</p> <p>Note <i>You should plan to spend approximately 20 hours researching the assignment question, preparing for and writing the assignments for assessment. The nominal word count for the assignment is 1,700 words unless indicated otherwise in the question.</i></p> <p><i>Please refer to 21 Academy's Assignment Guidelines for more information on how your assignment should be submitted.</i></p>	
<p>Choose and answer 1 (ONE) question from the following:</p> <p>Question 1: Bier Inc has a global market share of 29% for the manufacture and sale of beer. Bier wishes to expand its distribution network into the EU with the following objectives:</p> <ol style="list-style-type: none"> a) The implementation of a selective distribution system; b) Online sales are to be controlled by Bier; c) Monitoring of its distributors for compliance with the retail prices at regular intervals. <p>Assuming that each of the distributors' market share is below 30%, please advise Bier as to whether the distribution agreements infringe Article 101 TFEU.</p> <p>In preparing your advice please consider:</p> <ul style="list-style-type: none"> • What are the constitutive elements for an agreement to fall under Article 101 TFEU? • Is there any EU block exemption regulation available to the proposed agreements? • Can Bier set up a selective distribution in the first place? • What are the competition law rules on online sales and retail prices in this context? • Is there any case law that can assist in the formulation of the advice to Bier? <p>Question 2: Bier Inc has become the largest brewery in the EU Member State Birraland. On a potentially relevant market for the production and sale of beer in Birraland, Bier Inc holds a market share of 50 %. There are four other breweries with market shares around 10 % each. A large number of smaller craft breweries make up the remaining 10%.</p> <p>There is a strong customer and brand loyalty for the Bier brand and there are quite significant barriers to entry and expansion in the beer market because production of beer is characterised by economies of scale. If the relevant market were to include the production and sale of all alcoholic beverages (including wine and spirits) in Birraland, Bier's market share would only be 25 %.</p>	

Bier also sells beer to distributors in the neighbouring EU Member State Bacteria, at significantly lower prices than to distributors in Birraland. Bier implemented a policy whereby distributors in Bacteria were only supplied limited quantities of beer in order to limit sales to Bacteria distributors and prevent imports of cheaper Bier beer to Birraland.

Discuss whether Bier has infringed Article 102 TFEU.

In preparing your advice please consider:

- What are the constitutive elements of an Article 102 TFEU case?
- How would the relevant market be defined? Has the European Commission defined the beer market in previous EU merger control or Article 101/102 TFEU cases?
- Is Bier dominant in terms of Article 102 TFEU?
- How would you describe Bier's conduct in terms of Article 102 TFEU?
- Is there any case law that can assist in the formulation of this advice?

Question 3:

Bier entered into an agreement for the purchase of 40 % of the shares and accompanying voting rights in the company 'The Kernel Brewery AS'. In a separate shareholders' agreement with the other shareholders in this company, Bier was given the right to veto decisions in 'The Kernel Brewery AS' concerning its budget, business plan, major investments and appointment of senior management.

Assuming that the EU turnover thresholds are met, discuss whether Bier's agreement for the purchase of shares in The Kernel Brewery AS and the shareholders' agreement, constitutes a concentration in terms of the EU Merger Regulation (Reg.139/2004).

Pass Mark - 50% of total weighted score including multiple choice exam score	Total Assignments Weighting - 80%
By submitting I confirm that this assessment is my own work	
Mark:	Signature: <main assessor>
Date	Signature: <quality assurance>